United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-7505

To be argued by
STUART R. WOLK

In The

United States Court of Appeals

For The Second Circuit

CROWN FINANCIAL CORPORATION,

Plaintiff-Appellee,

vs.

WINTHROP LAWRENCE CORPORATION and LAMMOT DUPONT COPELAND, JR.,

Defendants,

and

DIVERSIFIED GENERAL, INC.,

Intervenor-Appellant.

On Appeal from the United States District Court for the Southern District of New York

REPLY BRIEF FOR PLAINTIFF-APPELLEE

STUART R. WOLK
Attorney for Plaintiff-Appellee
Suite 1809, Pennsylvania Building
225 West 34th Street
New York, New York 10001
(212) 524-4050

ALBERT M. GROSS
ARTHUR E. NEUMAN
Of Counsel

(8970)

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INDEX

TABLE OF CASES, STATUTES AND AUTHORITIES

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

CROWN FINANCIAL CORPORATION,

Plaintiff-Appellee,

-against-

WINTHROP LAWRENCE CORPORATION and

LAMMOT DUPONT COPELAND, JR.,

Defendants

and DIVERSIFIED GENERAL, INC.

Intervenor-Appellant

REPLY BRIEF OF PLAINTIFF-APPELLEE CROWN FINANCIAL CORPORATION

ISSUES

Appellee for its Reply Brief in this Appeal adopts the issues as presented by the Appellant at page 1 of its brief except that as to Issue 3 which should be restated. Judge Metzner in his Order of July 30, 1975 denying Appellant's Motion To Intervene and To Vacate (Joint Appendix p. 42 a) stated that the matter should be prosecuted by the receiver of the bankrupt Winthrop Lawrence Corporation rather than the "Trustee in Bankrupcty."

Issue 3 should be corrected to read as follows:

> "3. Was it error for the District Court to take tne position that the matter should be referred to the Receiver in Bankrupcty?"

STATEMENT OF THE CASE

Appellee adopts Appellant's Statement of Case set forth at page 2 of its brief.

STATEMENT OF FACTS

Appellee for its statement of facts substantially adopts the facts as stated by Appellant except insofar as they may give any suggestion or inference that Appellee or its counsel had notice of the November 12, 1970 Stay Order at anytime before the court below entered the November 25, 1970 judgment against Winthrop Lawrence Corporation.

More correctly, in reference to Appellant's assertion that counsel for Appellee was aware of a newspaper article which indicated that Winthrop Lawrence Corporation entered a Bankruptcy Petition in the Maryland District Court, it should be stated that neither appellee or its counsel nor the court below had any notice from Winthrop Lawrence Corporation or its counsel of a stay order nor did the latter provide the former with any official documentation or specific information as to the nature of any bankruptcy proceeding in the U.S. District Court, Baltimore, at any time prior to November 25, 1970. The only information furnished to Appellant, its counsel or the court below was a letter by counsel for Winthrop Lawrence Corporation on November 11, 1970 representing that the New York Times had reported Winthrop Corporation had filed a Petition in Bankruptcy: however, that newspaper story was in conflict with

another report at about the same time by the Wall Street Journal, reporting that the said corporation is about to go into bankruptcy (See Affidavit of Stuart R. Wolk and Exhibits A and B annexed thereto, Joint Appendix pages 29 thru 35a).

On December 8, 1970 Appellee's counsel wrote to the Referee in Bankruptcy, U.S. District Court, Baltimore, inquiring about the alleged filing of a bankruptcy proceeding as reported in the newspapers and complaining about failure of the creditors to receive official notice of the proceedings. (See Exhibit C, Joint Appendix page 36a).

On December 11, 1970 the Referee in Bankruptcy sent out Notice of the First Meeting of Creditors to be held on December 21, 1970. (See Appendix)

The Receiver who sold appellant the California property had specific knowledge of the Judgment below for over four years.

On January 29, 1971, appellee's counsel filed a copy of the judgment below as part of Appellee's Amended Proof of Claim, in the Baltimore Bankruptcy Court (Exhibit D 1. Joint Appendix page 38a).

Notwithstanding full and complete knowledge for over four years that the judgment below was entered on November 25, 1970, no action, proceeding or questioning has been raised pertaining to it by the debtor corporation, its officers and/or directors, the Receiver in Bankruptcy, the Referee in Bankruptcy or any of the creditors until Appellant filed its motion to intervene.

Neither the receiver, the bankrupt, the referee or any of the parties concerned with the bankruptcy proceedings recorded the petition in bankruptcy in the Madera County Office where land records pertaining to real estate are recorded. The debtor in bankruptcy included its possessory interest in the schedules filed with the petition.

The debts of the debtor corporation, Winthrop Lawrence Corporation, have not been discharged and the Chapter XI proceedings involving said debtor and its property are still pending before the Baltimore Bankruptcy Court.

PROCEEDINGS BELOW

Appellee adopts the statement of proceedings below as stated by Appellant except that reference in the last sentence to "Trustee in Bankruptcy" should read "Receiver in Bankruptcy" as recited in Judge Metzner's Order of July 30, 1975.

ARGUMENT

POINT I

THE DISTRICT COURT WAS CORRECT IN DENYING APPELLANT'S MOTION TO INTERVENE BECAUSE THE JUDGMENT BELOW IS VALID AND NOT SUBJECT TO COLLATERAL ATTACK BY APPELLANT

There was no necessity for nor matter of right to permit appellant to collaterally attack a valid judgment and the court below was correct in denying the motion to intervene filed under Rule 24 (a)(2) of the Federal Rules of Civil Procedure.

(a) The Judgment Was Obtained In Good Faith

The judgment was and is valid because it was obtained by appellee in good faith and granted by the court below without knowledge of the stay order and without definite specific information as to the time of filing or specific information concerning the bankrupt proceedings in the Baltimore court. The facts as set forth in the Statement of Facts clearly show that neither sppellee, its counsel or even counsel for Winthrop Lawrence Corporation had specific knowledge of the stay order or any particulars pertaining to the proceedings in bankruptcy.

(b) Notice Of The Bankruptcy And Stay Order Was Not Timely Made

The only representations made by the debtor corporation's own attorney to the court below concerning the bankruptcy was a letter to the Chief Judge on November 11, 1970 that he read in the New York Times of November 10,1970

that his client had filed a petition under Chapter XI of the Bankruptcy law - nothing more. (Exhibit A, Joint Appendix page 33a). This hearsay report was contradicted by another article the same day in the Wall Street Journal which reported that Winthrop Lawrence Corporation was about to enter into Bankruptcy. (See Exhibit B, Joint Appendix page 34a).

Other than these conflicting hearsay newspaper reports no notice or representation of any kind concerning the bankruptcy proceedings in the Baltimore Court was made to the court below prior to the entry of the November 25, 1970 judgment. In support of Appellee's contention that there was a definite void in any meaningful suggestion of bankruptcy supported by a stay order that would have prompted the appellee or the court below to terminate proceedings it should be noted that the Bankruptcy Court in Baltimore did not send out Notice of the First Meeting of Creditors until December 11, 1970. (See Appendix)

(c) Appellant Failed To Bear Burden Of Proof Of Notice

Appellant argues that Appellee had notice of the date of bankruptcy and stay order by virtue of the hearsay reports in the newspapers, but it is clear that the record below contains no evidence or proof that the November 12, 1970 stay order of the Referee in Bankruptcy was served on Appellee or its attorney or that they received actual notice thereof at anytime prior to the November 25, 1970 judgment or the subsequent filing of the lien in California.

It was obvious from a fair reading of the facts below that the debtor corporation took no steps to foreclose further proceedings in the court below and permitted the action to proceed to judgment in spite of the stay order. The failure of the debtor to properly convey the existence of the stay order caused the court below to enter the judgment and it cannot be heard to complain and is barred by laches. By the same token the Appellant-Interveners can have no better rights than the debtor under the circumstances and is also barred by laches.

(d) A Stay Order Without Proper Notice Given Does Not Affect The Validity Of The Judgment

It is obvious from the record in the court below that defendant Winthrop Lawrence Corporation and its counsel were remiss in properly apprising the Appellee and the U.S. District Court, Southern District of New York of the nature of the Baltimore bankrupt proceedings. The net result was that the stay order of the Bankruptcy Court had no effect on otherwise valid proceedings. Until notice of the filing of a petition and the issuance of a stay order has been effectively served by appropriate notice, the stay order is not a bar to the proceedings of the court below in entering judgment for Appellee. Just as a creditor is not barred from presenting a claim because he did not receive notice of a meeting to consider a composition (In re Passow and Sons (CCA 7), 300 Fed. 544, 4 Am B (NS) 1067 and In re Watman, Konopolsky and Bernstein, (DC-NY), 291 Fed. 886, 1 Am B (NS) 331), the Appellee was not barred from proceeding to

final judgment where it did not receive notice of the First Meeting of Creditors nor notice of the stay order of the Baltimore Bankruptcy Court until long after the November 25, 1970 final judgment had been entered by the court below.

(e) The Mere Filing Of The Petition In Bankruptcy Is Not Constructive Notice So As To Automatically Invoke The Stay Order Unless There Is A Recordation Of The Petition In Madera County

Although the filing of the petition in bankruptcy is, as some courts have held, a caveat to all the world, and in effect an attachment and injunction by the bankruptcy court (Mueller v. Nugeat, 184 U.S. 1, 46 L.Ed. 405, 22 SCR 269, 7 Am B 224, revg. 105 Fed. 581, 5Am B 176; In re Gutman (DC-NY), 114 Fed. 1009, 8 Am B 252), the Bankruptcy Act itself requires actual notice to the lienor of the pendency of the petition before he can be charged with the consequences of the filing of a petition in bankruptcy.

Section 44(g) of 11U.S. Code (Section 21g of the Act) requires recordation of the bankruptcy petition in the office where conveyances of real property are recorded, in every county where the bankrupt owns or has interest in real property. It furthers provides that unless such recordation is made by the bankrupt, trustee, receiver, custodian, referee or any creditor the filing of the bankruptcy petition shall not be constructive notice to the lienor. Section 44(g) reads as follows:

> "(g) A certified copy of the petition with the schedule omitted, of the decree of adjudication or of the order approving the

> trustee's bond may be recorded at any time in the office where conveyances of real property are recorded, in every county where the bankrupt owns or has an interest in real property. Such certified copy may be recorded by the bankrupt, trustee, receiver, custodian, referee or any creditor, and the cost of such recording shall be paid out of the estate of the bankrupt as part of the expenses of administration. Unless a certified copy of the petition, decree or order has been recorded in such office, in any county wherein the bankrupt owns or has an interest in real property in any State whose laws authorize such recording, the commencement of a proceeding under this Act (this title) shall not be constructive notice to or affect the title of any subsequent bona-fide purchaser or lienor of real property in such county for a present fair equivalent value and without actual notice of the pendency of such proceeding: Provided, however, That where such purchaser or lienor has given less than such value, he shall nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him. The exercise by any court of the United States or of any State of jurisdiction to authorize or effect a judical sale of real property of the bankrupt within any county in any State whose laws authorize the recording aforesaid shall not be impaired by the pendency of such proceeding unless such copy be recorded in such county, as aforesaid, prior to the consummation of such judical sale: Provided, however, That this subdivision shall not apply to the county in which is kept the record of the original proceedings under this Act (this title)."

Appellant has not demonstrated to the court below that there was a recordation of the petition in bankruptcy filed in the land records of Madera County.

Appellee submits that, under the circumstances of the facts involved in the proceedings below where neither the bankrupt, receiver, referee or creditors took any steps to record the petition for an arrangement in the Madera County.

knowing that the debtor corporation had an interest in real estate in said county and otherwise failed to give appropriate notice of the bankruptcy proceeding and the stay order, that Appellee has all the rights of a lien holder without notice as provided by Title 11 USC Section 44(g)(Section 21(g) of the Act).

It is further submitted, arguendo, that if Appellee had been able to execute on the California lien within the short period of time that it had no notice of the Baltimore bankruptcy proceedings and the stay order that even the bankruptcy court would have decreed such execution valid to the extent that Appellee as the lienor has given value or consideration to the bankrupt.

Section 21(g) recognizes such record is itself constructive notice of the pendency of the bankruptcy a d of the resultant divestment of the bankrupt's title to reality in that county. In re Kabbage, 93 F. Supp. 516, 517 (Ref. N.D. Ohio 1950)

POINT II

THE DISTRICT COURT WAS CORRECT IN DENYING THE MOTION TO INTERVENE BECAUSE APPELLANT HAD NO INTEREST IN THE CONTROVERSY

Appellant argues that it had met the three requirements under Federal Rules of Civil Procedure Rule 24(a)2 and that therefore the court below should have permitted intervention as a matter of right. Appellee submits that Appellant did

not have the type of interest in the proceedings before the U.S. District Court, Southern District of New York so as to give it intervention as a matter of right.

(a) Appellant's Interest Is Too Remote From The Actual Controversy

It is obvious from the Statement of Facts that Appellant's interest is not direct and in point of fact it had no interest whatsoever in the proceedings at the time the action arose nor at any time until long after the valid judgment was entered. Appellant had no interest in the matter during the pendency of the controversy. Appellant's interest came about only by virtue of the proceedings in the bankruptcy court, e.g., the sale to it of property affected by a valid judgment - a judgment which had been in existence for almost four year prior to the sale.

Appellee cites American Jerex Co. v. Universal Aluminum Extrusions, Inc., 340 F. Supp., 524, 530 (E.D.N.Y.) 1972, as authority for its right of intervention. American Jerex does not support Appellant since it can be distinguished on the basis of the nature of the interest. In American Jerex, the intervenor had an interest in the property which was the subject of the action in which it sought intervention; that interest was the accounts receivable which had been assigned to the intervenor which were being attached by the plaintiff in the action in which intervenor sought to intervene. Diversified General, Inc. had no interest in the suit involving Crown Financial Corporation against Winthrop Lawrence Corporation at anytime until after the action was complete, until after the final judgment was entered, until after the lien based on that judgment was filed and not until four years later when it bought the property already affected by a valid judgment did Appellant acquire an interest.

(b) The Nature Of The Interest Is Important For Application Of Rule 24

It is submitted that for purposes of F.R.C.P. 24(a)(2) a careful distinction must be made as to the nature of the interest the intervenor has in the subject matter of the litigation at the time the action arose and was in litigation and not after the litigation is over. Viewed in this light the nunc pro tunc argument presented by Appellant fails. The right of the intervenor to intervene must be viewed at the time the action is in progress and not four years later after judgment.

(c) Appellant's Interest Was Not In The Subject Matter Of The Action

An intervenor in an action or proceeding is, as a practical matter, an original party. Re Raabe, Glissman & Co. (1947) DCNY, 71 Fed. Supp. 678. It would be stretching the imagination beyond credulity to consider Appellant a ligitimate party in the controversy below. Diversified was not privy to nor did it have any interest in the transactions or contractual relationships between plaintiff-appellee and defendants Winthrop Lawrence Corporation and Lammot duPont Copeland, Jr. which would give it an interest in the prior proceedings before the court below. Any interest that it may now have does not stem from the suit before the court below nor was it concerned whether or not a judgment was entered. Its interest is really post judgment and was dependent on what Appellee did with the judgment. Intervenor's interest is not affected by the action taken by the Court below - it only arose after the judgment was complete and then some four years later when it bought the California property. Appellant - Intervenor's interest for purposes of F.R.C.P. 24 is not the subject of the action which this court need be concerned about.

(d) Disposition Of The Controversy By The Court Below Will Not Affect Appellant's Interest

Appellant argues under Rule 24 that its interest is not being protected or adequately represented by the existing parties and that unless it is allowed to intervene that its ability to protect that interest, as a practical matter,

would be impeded.

As a practical matter Appellant - Intervenor's interest at this stage is nothing more than release of the lien brought about by conclusion of the litigation in the court below (in which it had no interest). So in reality since judgment has been entered, Appellant has no interest in the controversy in the court below. The release of the lien is the "gravamen" of Appellant's interest. As will be presented below Appellee asserts that the protection of this interest is more appropriate for the Maryland Bankruptcy Court which acquired "custodia legis" over the California property upon which the lien was filed or the California courts where the property is located.

POINT III

RULE 60(b) OFFERS NO BASIS FOR APPELLANT TO COLLATERALLY ATTACK THE JUDGMENT BELOW

Appellant's arguments that it is entitled to relief under Rule 60(b) fail because it is neither a party nor a legal representative of a party in the proceeding below and, for the reasons stated above, the judgment is valid.

Appellant strains the facts when it boldly asserts that Appellee knew of the stay order by virtue of letters by counsel to the Chief Judge of the court below. These letters were not enough to convince the court below that Appellee or its counsel had knowledge of the stay order or the Baltimore Bankruptcy proceedings and Appellee submits

that these letters are the best evidence and speak for themselves. Appellee is not estopped from denying knowledge of the stay order or the Baltimore Bankruptcy proceedings (at material times) until Appellant submits proof by a preponderance of evidence that it in fact had such knowledge.

POINT IV

THE DISTRICT COURT WAS CORRECT IN DENYING THE MOTION TO INTERVENE BECAUSE APPELLANT'S INTEREST IN VACATING THE LIEN CAN BEST BE HANDLED BY ANOTHER FORUM

Appellant as a basis for intervention is relying upon the stay order entered by the Referee in Bankruptcy on November 12, 1970. The court below determined that the order had not been brought to its attention without resolving the reason therefor; but it did correctly find that the matter should be properly resolved in the bankruptcy court for the following reasons:

(1) Four years elapsed between the entry of the judgment, its filing in California, and the purchase of the property by Appellant;

(2) Everyone knew of the existence of the judgment during the four year period, and

(3) The facts are peculiarly within the knowledge of the bankruptcy court in Maryland.

(a) The Court Below Correctly Ruled The Bankruptcy Court As The Appropriate Forum

Appellant by arguing that the Bankruptcy Court has the "custodia legis" over the property of the debtor corporation in effect concedes that the Baltimore bankruptcy court is the most appropriate forum for any relief it may be entitled to. Appellee does not dispute the jurisdiction of the bankruptcy court over the property of the debtor corporation or the right of that court to ascertain the validity of the California lien. Appellee simply states that under the circumstances of this case that notwithstanding the proceedings in bankruptcy and the stay order that the judgment below is valid and since the judgment is valid so is the lien until one of the following events occur:

(1) The judgment below is dealt with by the bankruptcy court under an arrangement plan or by discharge in bankruptcy if no plan is effected.

(2) Application by Appellant to the Bankruptcy court for a favorable determination that the stay order of November 12, 1970 effectively barred the court below from entering the November 25, 1970 judgment.

As to event (1), if the judgment below is discharged in bankruptcy it would have no validity to support the California lien. Should this event occur Appellee would voluntarily withdraw the lien since it would obviously be moot. Likewise, if the Baltimore bankruptcy court determined that the November 12, 1970 stay order effectively terminated all action in the court below, Appellee would either withdraw the California

lien or appeal the decision.

Other facts which support the logical position taken by the court below that the bankruptcy court is the appropriate forum are:

(1) Both Appellant and Appellee are already before the bankruptcy court. Appellant by virtue of the purchase of the California property from the receiver and Appellee by virtue of having filed a proof of claim.

(2) The Bankruptcy Court is in a better position to ascertain whether the judgment below and the California lien have or will affect the orderly administration of the debtor's property under the Chapter XI proceedings so as to invoke any superior juris dictional rights that it might have under the law.

(b) The Stay Order Is The Only Basis Upon Which Appellant Can Attack The Judgment

Since the purpose of the Stay Order is to preserve and protect the property of the debtor in bankruptcy from any interference by outside court actions it is only logical that the bankruptcy court determine whether the subsequent final judgment and lien so affected the administration of the proceedings so as to require application of the Stay Order. Appellant argues that it has, but the facts belie such assertions.

It is obvious that but for Appellant's intervention suit, the final judgment, and the California lien based thereon, had no affect on the Baltimore bankruptcy proceedings and the debtor's property otherwise a proceeding in that court

directed against Appellee would have been taken years ago. It clearly appears that the proceedings of the court below in allowing final judgment after the issuance of the stay order has not imposed any undue disadvantage on the debtor or have hindered, burdened or been otherwise inconsistent with the arrangement proceeding. Foust v. Munson SS. Linis, 299 U.S. 77, 83, 57 S.Ct. 90, 81 L.Ed. 49; In re Adolf Gobel Inc., 2 Cir. 89 F.2d 171. If it has, as Appellant argues, the bankruptcy court is the appropriate tribunal to make this determination.

Nevertheless, since Appellant is predicating its rights to upset the judgment on the stay order all the facts and circumstances point to that court as the proper and appropriate forum. Even more so since both Appellee and Appellant are already before the Baltimore Bankruptcy Court - the Appellant by virtue of its purchase of the California property from the Receiver and Appellee by virtue of its proof of claim filed in that court (See Exhibit D 1 and D 2, Joint Appendix, pages 38a and 39a).

Appellant seeks to protect property that was for over four years within the exclusive control of the bankruptcy court.

Title 11 USC Section 711 (Section 311 of the Act). "Where not inconsistent with the provision of this Chapter. . ., the court in which the petition is filed shall, for the purposes of this chapter. . ., have exclusive jurisdiction of the debtor and his property, whereever located." The filing of the petition for an arrangement gives the bankruptcy court

exclusive jurisdiction over debtor's property. In re Breinig. (DC-PA). 40 F. Supp. 29. 48 Am B (NS) 168.

Validity of the lien can be determined in the Baltimore bankruptcy court because the California property was in its possession.

Possession of the California property by the receiver gave the Baltimore bankruptcy court jurisdiction to determine the validity of the lien. In re Rock Spring Water Co.,(CCA 3), 140 F(2d) 566, 55 A, B (NS) 433 the court held that validity of the chattel mortgage could be determined in the bankruptcy court where the property had been taken over by the receiver in bankruptcy.

POINT V

THE CALIFORNIA LIEN IS NOT AFFECTED BY THE BANKRUPTCY COURT'S STAY ORDER

Appellant assumes, ipso facto, that the lien filed in Madera County pursuant to the California statutes is invalid and must be removed because of the bankruptcy court's stay order. What Appellant fails to perceive is that Appellee's actions in filing the lien are not contrary to the California state law nor federal bankruptcy law.

Under the applicable bankruptcy statutory law relating to stay orders the issuance of a stay order is permissive and limited in application. 11 USC 714:

> "Section 714. Stay of Actions. The Court may, in addition to the relief provided by section 29 of this title and elsewhere

> under this Chapter, enjoin or stay until final decree of commencement or continuation of suits other than suits to enforce liens upon the property of a debtor, and may, upon notice for cause shown, enjoin or stay until final decree of any act or commencement or continuation of any proceeding to enforce any lien upon the property of the debtor." (Emphasis Added)

The keys words in Section 714 are "to enforce." A review of the record below clearly shows Appellee took no action whatsoever to enforce the lien on the Madera property.

(a) The Power Of The Stay Order Is Limited To Actions Enjoining Enforcement Of The Lien And Not Perfecting A Lien

It has been frequently held that an adjudication in bankruptcy does not prevent a claimant from perfecting a lien as distinguished from enforcing it. In re Weston, 68 F.2d 913 98A.L.R. 319 (C.C.A 2); New York Brooklyn Fuel Corporation v. Fuller, 11 F.2d 802 (C.C.A. 2); In re Emslie, 102 F. 291 (C.C.A. 2); In re Kirby-Dennis Co., 95, F.116 (C.C.A. 7); Gates and Co. v. Stevens Construction Co., 220 N.Y. 38, 115 N.E. 22; John P. Kane Co. v. Kinney, 174 N.Y. 69,66, N.E. 619; Hildreth Granite Co. v. City of Watervliet, 161 App. Div. 420, 146 N.Y.S. 449; Crane Co. v. Pneumatic Signal Co., 94 App. Div. 53, 87 N.Y.S. 917, affirmed Crane Co. v.Smythe, 182 N.Y. 545, 75 N.E. 1128; Dick Sand Co. v. State, 137 Misc. 622, 244 N.Y.S. 312.

In re Willax, Exparte Harold H. Smith, Inc. et al (1937) (C.C.A. 2) 93 F.2d 293 the Second Circuit held that pendency of a composition or extension in the bankruptcy court did not prevent the holder of a mechanics lien from

applying to a court under the New York Statute for an order continuing the liens. The court held continuing of the liens is to be distinguished from enforcing the liens, the former was held not to be in violation of the stay order although the latter would be.

Appellee submits that its action in filing the lien based on the valid judgment below is merely tantamount to continuing the lien under the California Statute that gave rise to the right to file such a lien as in the Willax case, supra. It is not within the power of the stay order of the Baltimore Bankruptcy Court since the record is clear that Appellee has taken no action to enforce the lien.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that the Court below was correct in denying Appellant's motion to intervene, was correct in refusing to vacate the judgment against Winthrop Lawrence Corporation and was correct in suggesting that the appropriate forum for the relief sought by Appellant is in the Baltimore bankruptcy court.

WHEREFORE, it is respectfully requested that the Order of Judge Metzner dated and entered July 30, 1975 be affirmed.

Respectfully submitted.

STUART R. WOLK
Attorney for Plaintiff-Appellee
Suite 1809 Pennsylvania Building
225 West 34th Street
New York, N.Y. 10001

Of Counsel:
Albert M. Gross
Arthur E. Neuman

BK-4

United States District Court

FOR THE
DISTRICT OF MARYLAND

IN THE MATTER OF

WINTHROP LAWRENCE CORP.

IN BANKRUPTCY

NO. 14360

~~Bankrupt.~~
Debtor.

CERTIFICATE OF MAILING

I, Madeline C.Ciesielska, a regularly appointed and qualified clerk in the office of JOSEPH O. KAISER, Referee in Bankruptcy of the United States District Court for the District of Maryland at Baltimore, hereby certify;

1. That I personally, pursuant to instructions from said Referee in Bankruptcy and in the performance of my duties as such Clerk, mailed to each of the creditors of said {~~bankrupt~~ debtor} named in the schedules or list of creditors filed herein or as otherwise appearing in the files in this cause, except where the address is unknown, a Notice of first meeting of creditors

a true copy of which is hereto attached, such Notice being enclosed in a sealed envelope bearing the lawful frank of the Referee in Bankruptcy, and the name and post-office address of such creditors as such name and address appears in the schedules or list of creditors of said {~~bankrupt~~ debtor} on file in this Court, or otherwise appearing in the files in this cause.

2. That after the name and address of each creditor was placed upon an envelope in which said Notice was enclosed, the name and address of each creditor on such envelope was carefully checked with the name and address of said creditor as shown in this cause and found to be exactly the same as the name and address appearing in the files in this cause.

3. That said envelope containing such Notice, was deposited by me in a regular United States Mail Box in the City of Baltimore, in said District, on the 11th day of December, 19 70.

4. That a copy of such Notice was also so mailed to each of the parties at their respective addresses listed below.

1. District Director of Internal Revenue,P.O. Box 1076, Baltimore,Md. 21203. SPECIAL PROCEDURES SECTION
2. Dept. of Employment Security-1100 N.Eutaw Street, Baltimore,Md. 21201.
3. Compt.of Treasury, Retail Sales Tax-Div. 301 W. Preston St.,Baltimore,Md. 21201.
4. Compt. of Treasury, Income Tax Div., Withholding Dept. State Office Bldg., Annapolis,Md., Att: Mr. Carl H. Momberger.
5. Chief of Revenue & Disbursements, Room 311, Montgomery County Office Bldg., Rockville,Md.
6. Secretary of the Treasury,
7. Securities & Exchange Commissions.
8. George [illegible], Universal Bldg., North, Rm.422, 1875 Conn.Ave.N.W. Washington, D.C.

Madeline C. Ciesielska
Clerk.

DEC 11, 1970

JOSEPH O. KAISER
REFEREE IN BANKRUPTCY

LK-2-3-67—2M Pads—7825

I certify that
this is a true copy.
Attest Ethel Eskridge
Chief Clerk in Bankruptcy

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

IN THE MATTER OF:	:	IN PROCEEDINGS FOR AN
	:	ARRANGEMENT UNDER CHAPTER XI
WINTHROP LAWRENCE CORP.	:	OF THE BANKRUPTCY ACT
Tax No. 52-0896580	:	
	:	
Debtor	:	No. 14360

To WINTHROP LAWRENCE CORP., Debtor, 5454 Wisconsin Avenue, Chevy Chase, Maryland 20015, its creditors, and to other parties in interest:

NOTICE is hereby given that on the 10th day of November, 1970, WINTHROP LAWRENCE CORP., filed a petition in this court proposing an arrangement with its unsecured creditors under the provisions of Chapter XI of the Bankruptcy Act, and that a meeting of its creditors will be held at ROOM 556 POST OFFICE BUILDING, in Baltimore, Maryland on the 21st day of DECEMBER, 1970 at 11:00 o'clock A.M. at which place and time the creditors may attend, prove their claims, nominate a trustee, appoint a committe of creditors, examine the debtor, present written acceptances of the proposed arrangement, if filed, and transact such other business as may properly come before the meeting.

Annexed hereto are a copy of summary of the liabilities and summary of the assets of the debtor as shown by the schedules filed herein.

Dated this 11th day of December, 1970

JOSEPH O. KAISER
Referee in Bankruptcy
343 Post Office Building
Baltimore, Maryland 21202

Telephone: 962-2689

APPENDIX

A 202 Affidavit of Personal Service of Papers H LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CROWN FINANCIAL CORP.
Plaintiff- Appellee

against

WINTHROP LAWRENCE CORP.
Defendants,

DIVERSIFIED GENERAL
Intervenor- Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

That on the 28th *day of* November *19* 75 *at* 22 East ~~4X~~ 40th Stteet, New York

deponent served the annexed *upon*

KNOLL, EDELMAN, ELSER& WILSON

the Attorneys *in this action by delivering* 2 *true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* *herein,*

James Steele
Print name beneath signature

Sworn to before me, this 28th
day of November *19* 75

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977